

## Considering a Residential or Business Move to the UK? Read our Practical Guide to Residential and Commercial Property in the UK

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By **Paul Webb**, 15th March 2023

### **Can Non-Residents buy property in the UK?**

Yes. There is nothing stopping a non-UK resident individual or corporate body buying property in the UK (although an individual will need to be aged 18 years or above to own legal title to property and an overseas corporate entity must before acquiring a qualifying property firstly be registered at Companies House in compliance with the Economic Crime (Transparency and Enforcement) Act 2022).

Other than the above, different laws apply in Scotland and Northern Ireland as opposed to property in England and Wales. We will focus below on property located in England and Wales. If you intend to purchase property in Scotland or Northern Ireland, please seek independent advice from a specialist in those areas.

The below guidance is focused on property located in England and Wales.

### **How do you begin your property search?**

There are a number of online property search engines. Traditionally agencies either specialise in commercial or residential property but not both. Start with a search engine to compare properties in your chosen city or other location and get in touch with the local agent advertising the property to arrange a viewing. Negotiating price below the

price advertised is common.

### **Why is it important to view a property?**

Once you find a property it is important to see it, carry out the usual pre-contract searches against it (a property solicitor or registered conveyancer will be able to assist you) or ask a surveyor to view it.

The principle of *caveat emptor* ("let the buyer beware") applies at common law. A buyer alone is responsible for checking a property. To purchase without carrying out a viewing or survey will in most cases be at the entire risk of the buyer. Sellers will normally not provide warranties or indemnities as to the suitability of the property.

### **How do you finance the purchase?**

The estate agent and any professionals involved in the sale will be interested to know how you intend on financing the purchase. This could be with cash, but the majority of property purchased in England and Wales is through a mortgage/property loan. There are no restrictions on foreigners securing a UK mortgage to help finance a purchase although you might encounter stricter requirements, the obligation to pay a larger deposit and higher interest rates.

### **What type of legal "estate" to the property are you intending on buying?**

Generally, property is either sold with freehold title (you possess it absolutely) or leasehold title (borne out of freehold property which you possess for a number of years) - both are estates in land. A number of other legal interests and beneficial interests also exist but these are not covered here.

His Majesty's Land Registry holds a register of all legal titles. If your offer price is accepted your legal advisor will review the relevant register of legal title for that property to see if the property you are buying is being sold subject to any incumbrances. Pre-contract enquiries will also normally be raised with the seller to ensure there are no over-riding third party interests in the property that may not have been obvious from your site visit.

### **If more than one purchaser wants to own the property, how will that property be held?**

The legal title to property can be held by up to four legal owners.

There may be tax advantages or disadvantages to how you decide to hold property as legal owner and whether that is by individuals or corporate entities or a combination of both. It is important to take independent tax advice at an early stage.

Where the property is intended to be held by co-owners, consider whether the legal title should be held by the co-owners as "joint tenants" (the beneficial ownership of each pass on death to the other co-owners) or as "tenants in common" (the beneficial share owned, passes on death to their estate or dealt with under their will).

### **What happens next?**

You have found a property and your offer price has been accepted and you have decided who will hold the legal title to the property. What happens next?

You will need to instruct a solicitor or conveyancer to carry out the relevant due diligence, raise enquiries, carry out the usual pre-contract searches and advise you on potential tax liability. You will need to pass the usual "know your client" due diligence before the legal work gets underway so be prepared to locate the relevant documents needed for the usual money laundering and other checks.

When purchasing a freehold or leasehold subject to a premium, a contract is usually drafted and negotiated between the parties. Once it is agreed, the contract is "exchanged" at which point a deposit is paid to the seller's solicitor (usually around 5 to 10% of the purchase price). Once a contract is exchanged both parties are bound to perform the contract (sell and buy) pursuant to the terms of the contract. "Completion" of the transaction happens on a date set out in the contract and is typically a month later but can be sooner or much later, depending on whether the contract is subject to conditions being satisfied.

Upon completion of the transfer of freehold or long leasehold property, the balance of the purchase price will become payable. For new short leases of both commercial and residential properties, once the new lease is dated, the matter has completed and the landlord will send the new tenant an invoice for rent, service charges and insurance as per the terms of the lease.

The buyers'/tenants' solicitor will need to make an application to His Majesty's Land Registry to register the transfer/new lease. The legal title will not pass until the registration is complete.

## What taxes need to be considered when taking a leasehold title or a freehold title?

The tax treatment from owning a freehold or leasehold in the UK will largely be dependent on why the individual or corporate entity holds the property. A purchaser may buy or lease a property to reside in, occupy premises to conduct their own trade from, own to develop in order to realise a rental income or buy as an investment to develop and sell on for a profit. Different taxes apply at each stage so it is important to speak with a tax specialist early on, depending on what plans you have for the property.

One tax that is payable within 14 days of completion of a lease or property transfer in England (unless one of the limited reliefs or an exemption applies) is stamp duty land tax ("SDLT").

For residential properties see the following rates below. However, a surcharge of an additional 3% is payable on top if the purchaser already owns property elsewhere:

<b>Property or lease premium or transfer value</b>	<b>SDLT rate</b>
Up to £250,000	Zero
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

When buying a new leasehold property, any premium will be subject to tax under the above. However, if the total rent over the life of the lease (known as the 'net present value') is more than the SDLT threshold (currently £250,000), you'll pay SDLT at 1% on the portion over £250,000. This does not apply to existing ('assigned') leases.

If you're not present in the UK for at least 183 days (6 months) during the 12 months before your purchase, you are 'not a UK resident' for the purposes of SDLT. You will usually pay a 2% surcharge if you're buying a residential property in England or Northern Ireland. For more information on this, please read our article: [Overseas buyers thinking of purchasing a residential property in England or Northern Ireland in 2021?](#)

On commercial property or mixed-use property, you will pay SDLT on increasing portions of the property price when you pay £150,000 or more. For a freehold transfer

of commercial land, you will pay SDLT at the following rates:

<b>Property or lease premium or transfer value</b>	<b>SDLT rate</b>
Up to £150,000	Zero
The next £100,000 (the portion from £150,001 to £250,000)	2%
The remaining amount (the portion above £250,000)	5%

When you buy a new non-residential or mixed use leasehold property you pay SDLT on both the purchase price of the lease and purchase price of the lease and the value of the annual rent you pay (the 'net present value'). These are calculated separately then added together. The above referred to surcharges also apply.

Your tax professional or lawyer will be able to calculate your SDLT liability according to the rates that apply at the time of your purchase or lease.

Other useful links:

- o <https://www.gov.uk/government/publications/how-to-buy-a-home/how-to-buy>
- o <https://www.gov.uk/government/publications/how-to-lease/how-to-lease>
- o <https://www.gov.uk/stamp-duty-land-tax/residential-property-rates>
- o <https://www.dixcartuk.com/five-years-have-passed-since-the-uk-government-set-out-its-intention-to-create-a-public-register-of-the-beneficial-ownership-of-overseas-entities-uk-assets-progress/>
- o <https://www.dixcartuk.com/register-of-overseas-entities-a-comprehensive-guide-to-the-new-registration-requirements-for-overseas-owners-of-uk-property/>
- o <https://www.dixcartuk.com/pre-arrival-uk-tax-planning-for-non-uk-domiciled-individuals/>

For more information or guidance on how to buy property, structure your business to save tax, tax considerations in the UK, incorporating outside the UK, business immigration or any other aspect of relocating or investing in the UK please contact us at [advice.uk@dixcart.com](mailto:advice.uk@dixcart.com).